



ABRAHAM, FRUCHTER & TWERSKY, LLP

May 13, 2024

By ECF

Hon. Arun Subramanian
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Courtroom 15A
New York, N.Y. 10007

Re: *Augenbaum v. Anson Master Fund, L.P., et al.* Case No. 1:22-cv-0249

Dear Judge Subramanian:

Plaintiff, pursuant to Rule 5.D of Your Honor's Individual Practices in Civil Cases, writes to request that: (i) the Court Order Defendants to produce the documents Defendants previously agreed to produce by May 30, 2024; and (ii) either schedule a discovery conference or allow Plaintiff a sixty (60) day extension with respect to the deadlines contained in the Case Management Plan and Civil Scheduling Order previously entered by the Court.

I. Defendants Should be Ordered to Produce Documents Previously Agreed Upon No Later than May 30, 2024

On January 31, 2024, Plaintiff served his first request for production of documents from Defendants. On or about March 1, 2024, each of the Defendants served responses and objections to Plaintiff's requests which were substantially similar in form and substance. On March 13, 2024, Plaintiff and Defendants conferred with respect to the objections served by Defendants. The parties agreed, *inter alia*, that Defendants would initially produce documents responsive to Plaintiff's requests as to which they object if the documents are relevant to the case and "hit" in response to the search terms and custodians ultimately agreed upon. On April 1, 2024, the parties conferred telephonically again concerning the proposed search terms. Although Plaintiff believed the parties had reached agreement on those terms, an exchange of emails occurring over the course of April 15 and April 16, 2024 further clarified the agreement.

Defendants, however, have **not yet produced a single document** responsive to Plaintiff's requests and on May 7, 2024, Plaintiff asked by email that Defendants commit to providing the agreed upon documents by May 30, 2024. Defendants only response came in a May 9, 2024 email stating that they are attempting to coordinate their responses. Plaintiff also reiterated his demand that Defendants immediately produce documents sufficient to identify all their trading in TOON's securities, data which in Plaintiff counsel's experience representing investment funds is relatively easily gathered.

Hon. Arun Subramanian

May 13, 2024


Page 2

Therefore, Plaintiff respectfully requests that the Court Order Defendants to produce the documents at issue by no later than May 30, 2024.¹

II. The Court Should Extend the Deadlines Applicable to Plaintiffs by Sixty Days or, Alternatively, Schedule a Discovery Conference

On February 26, 2024, this Court entered the Civil Case Management Plan and Scheduling Order (the “Plan”) which had been submitted by Plaintiff. See ECF No. 156. Among other things, the Plan calls for the initial submission of expert reports by June 1, 2024. See Plan ¶5.c. Plaintiff is unable to meet that deadline given that Defendants have not yet produced any documents and there exist outstanding disputes with respect to the production of documents, including disputes which Plaintiff is having with the Company that will be raised in a separate letter filed with the Court. In addition, many of the other proposed deadlines, admittedly originally proposed by Plaintiff, now seem less realistic given the unexpectedly slow pace of discovery to date. Therefore, Plaintiff requests a sixty (60) day extension with respect to all the deadlines and more specifically an extension of time within which to designate an expert witness of 30 days from the time Defendants substantially complete document production. Plaintiff also believes that a discovery conference designed to address the existing discovery disputes as well as scheduling issues may also prove helpful.

Respectfully submitted,



Jeffrey S. Abraham

The parties shall appear for a remote conference on May 15, 2024 at 1:30 p.m. The parties should dial 646-453-4442 and enter conference ID 799 608 568#.

SO ORDERED.



Arun Subramanian, U.S.D.J.

Date: May 14, 2024

¹ The following documents relevant to Defendants’ discovery responses are attached to this letter: Plaintiff’s document requests (Exhibit A); Defendant Anson Investment Master Fund’s responses and objections (Exhibit B); a March 19, 2024 letter from Plaintiff to Defendants (Exhibit C); an exchange of emails on April 15, 2024 and April 16, 2024 (Exhibit D); and a May 7, 2024 email sent by Plaintiff together with a May 9, 2024 response by Andrew Gladstein (Exhibit E). The meet and confer conference calls were arranged by Defendants. I do not have a list of those attendees and have asked Andrew Gladstein who at the time was an attorney with Schulte Roth and coordinated those calls for a list of attendees but was informed that also did not have such a list (Exhibit F).